

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL BAIL APPLICATION NO.1341 OF 2006

IN

CRIMINAL APPEAL NO.602 OF 2005

Shri Somnath Kaluram Kanchan ... Applicant

versus

The State of Maharashtra ... Respondent

Mr.O.A.Siddiqui with Mr.J.R.Khan and Mr.R.Rathod
for the applicant.

Ms.R.M.Gadhvi, APP, for the State.

Mr.M.S.Mohite for the complainant.

CORAM : D.G.DESHPANDE

SMT.NISHITA MHATRE, JJ.

DATED : APRIL 10, 2007.

P.C.

1. This is an application for bail by
applicant/original accused No.9. We heard

learned advocate Mr.Siddiqui for the accused No.9, learned advocate Mr.Mohite for the complainant to oppose this application and, learned APP Ms.Gadhvi for the State.

2. The main contention of learned advocate Mr.Siddiqui was that the Bench, comprising of Justice D.G.Deshpande and Justice S.A.Bobde had heard Bail Application No.742 of 2006 of original accused No.1 and by order dated 9th August 2006 granted bail to him. He also pointed out that even though star witness Prakash alias Appa Haribhau Londhe, who has lodged FIR, was an eye witness, in his cross examination, he has admitted that after 12 days of the incident, he moved an application to the Deputy Chief Minister and Home Minister of Maharashtra State to know as to who is master mind behind the murder of his brother and to know the actual true story. Learned advocate Mr.Siddiqui, therefore, contended that it was clear from this admission that Prakash Londhe was not an eye witness to the incident. So far as this accused No.9 is concerned, Mr.Siddiqui made similar submissions and added that the story of Prakash Londhe being an eye witness is falsified by P.W.2 Arjun

Kokare. He also pointed out that even though, according to this witness PW.2 and Prakash Londhe, deceased Vilas was taken in the jeep by both of them along with others and their clothes, sheet covers of the said jeep were all blood stained, same came to be recovered by the police after filing of the charge sheet and this itself proves that the case was false and concocted and at any rate was a strong suspicious circumstance, benefit of which was required to be given to the applicant/accused No.9 for grant of bail.

3. On the other hand, learned APP Ms.Gadhvi, appearing for the state and learned advocate Mr.Mohite, appearing for the complainant, strongly contended that when there are eye witnesses to the incident, the name of this accused has been given in the FIR, the FIR was lodged immediately and P.W.9 Prakash Londhe is corroborated by P.W.2 Arjun Kokare and other eye witnesses, then it was a fit case to refuse prayer for bail. Learned advocate Mr.Mohite also pointed out that admission of witness Prakash Londhe that after 12 days of the incident, he moved an application to the Deputy Chief Minister and Home Minister to know as to who is master

mind behind the murder of his brother and to know the actual true story, could not be interpreted as total ignorance about actual incident on the part of Prakash Londhe but it was required to be treated as an application to solicit more information and progress in the investigation. Mr. Mohite also contended that there were number of eye witnesses and pendency of many cases between the parties and strong enmity between two groups could not be lightly disregarded while considering the bail application.

4. We have given our anxious consideration to the submissions made by both the sides. It is true that in his evidence Prakash Londhe, who is the first informant and the eye witness, has admitted that after 12 days of the incident, he wrote a letter to the Deputy Chief Minister and Home Minister to know as to who is master mind behind the murder of his brother and to know the actual true story. Apart from that there are important admissions in the evidence of Prakash Londhe. In the cross examination he has admitted that at the time of incident he was knowing the names of accused Nos.3, 6 and 8 but he did not name accused Nos.3, 6 and 8 in the FIR. In

addition, in his supplementary statement dated 28.5.2002 also he did not name accused Nos.3, 6 and 8 and it was for the first time that in his third statement dated 23.7.2002 he disclosed the names of accused Nos.3, 6 and 8. Prakash Londhe was admitted that initially his clothes, seat covers of his vehicle and clothes of witness Arjun Kokare were not seized by police, but after his representation and application to the higher authorities, they were recovered by CID.

5. So far as the evidence of P.W.2 Arjun Kokare is concerned, his evidence appears to be unnatural. Because nine persons armed with weapons were seen by him, they knew the closeness of this witness with the deceased and Prakash Londhe, but still this witness had not received single injury. He alleges that he had shown courage to run to the rescue of deceased Vilas and to chase the accused after they went away in the jeep to find out as to where they are going with their jeep and then come back. Only to say that during the said occurrence no one else gathered there, i.e. excepting Prakash and P.W.2 nobody was the eye witness. Arjun Kokare (PW 2) is the co-accused with witness Prakash Londhe in

a case vide C.R.No.177 of 1991 registered at Yevat Police Station and then in another case vide C.R.No 113 of 1998 registered at Yevat Police Station.

6. Admittedly, there is a strong enmity between the parties of which this Court had taken note in the earlier order. The witnesses and the victim were the known criminals and as many as 17 cases were pending against witness Prakash Londhe for serious offences, whereas not a single case was registered against the applicant/accused. Therefore, all these reasons and on the ground of parity i.e. parity with accused No.1 who has been granted bail by this Court, this applicant/accused No.9 deserves to be granted bail. Hence We pass the following order :-

:ORDER:

Criminal Application No.1341 of 2006 is allowed.

Applicant - original Accused No.9 be released on executing his P.R. bond of Rs.10,000/- [Rupees Ten Thousand only]

with one solvent surety in the like amount.

Applicant - original Accused No.9 will mark his presence to Kalbhor Police Station, Pune once in a fortnight between 4.00 p.m. to 6.00 p.m. till the appeal is decided.

Substantive sentence of applicant - original accused No.9 is suspended pending appeal.

Fine, if any, to be paid by the applicant - original accused No.9 before his release.

Applicant - original accused No.9 shall not try to contact any of the prosecution witnesses or will not try to influence any one of them directly or indirectly.

Criminal Application is disposed off accordingly.

[D.G.DESHPANDE, J]

[SMT.NISHITA MHATRE, J]